# CONNECTICUT AS A CORPORATE COLONY.[1]

THE colony of Connecticut was formed by the union of the three river towns, Hartford, Windsor and Wethersfield, and of the plantations which they had established or annexed, with the jurisdiction of New Haven. It did not, then, develop from a single centre, as did New Plymouth; nor by the founding of a number of neighboring towns, all of which were from the outset coördinately related to a single colony government, as was the case in Massachusetts. Moreover, as these settlements, with the possible exception of Saybrook, were founded without the guaranty of charters of any sort, they had at first no express connection whatever with England.

They were not even under the nominal obligation imposed by the conditions of tenure within the manor of East Greenwich. In their case, during the early period of their existence, every vestige of such tenure, so far as it affected either external or internal relations, had vanished. These colonists left behind them in England no partners who could impose a system of common landholding or insist upon the maintenance of joint trading operations. It was not necessary for them to adjust any corporate business interests before leaving for the colonies which they intended to establish. The granting of shares of land to non-resident adventurers and the keeping of a colony magazine are not features in their early experience. In other words, these colonies did not develop from trading companies, and hence they do not exhibit any of the phenomena of transition which accompanied such a process.

Their settlers, as groups of emigrants animated by a more or less common purpose, came to Massachusetts, and thence —

[1] Articles by the writer of this paper, on "The Corporation as a Form of Colonial Government," appeared in this QUARTERLY in June, September and December, 1896.

some after a longer and some after a shorter sojourn — sought a permanent home in the valley of the Connecticut. In both stages of their migration they acted without the sanction, and so far as possible without the knowledge, of the English government. Hence, when finally settled, they established a system in which political independence was even more prominent than was commercial and territorial isolation. Apart, then, from the theories which they held concerning forms of civil and ecclesiastical government, we must look for an explanation of the origin of their institutions to the example of Massachusetts. The river towns, in particular, were an offshoot from that colony; and the influence which it had over their development has not always been duly appreciated.

The families which settled Hartford, Windsor and Wethersfield had been inhabitants of Massachusetts, some of them since its foundation. They were, accordingly, familiar with the system of government which existed there. The motives which induced them to leave England were, in general, the same as those which animated the great body of Massachusetts colonists: they were Puritans to the core, and were thus in sympathy with the general purposes of the Massachusetts enterprise. But, after a residence there of a few years, they were induced by a combination of causes to desire a removal still further west. The majority of those who joined in requesting from the general court permission to remove were probably influenced chiefly by the reports concerning the richness and the accessibility of the bottom lands of the Connecticut. Two or three of the leaders in the enterprise may also have been moved by feelings of jealousy and personal rivalry toward Governor Winthrop and Mr. Cotton, though this assertion is based upon rumor rather than upon positive evidence.

The later policy of the river towns would lead to the inference that one motive which induced them to remove was their disapproval of the religious test, but no contemporary reference to this appears. That Watertown, which was one of the towns that contributed largely to the emigration, was opposed to the assumption by the magistrates of the power to legislate and to

vote taxes, we are fully aware. Thomas Hooker[1] also, in a letter which in 1638 he wrote to Winthrop, objected to the almost unlimited discretion which it was then legally within the power of the magistrates in Massachusetts to exercise in matters of judicature and administration. Hooker insisted that the judge must have some rule to judge by, or government would degenerate into tyranny and confusion — a condition under which, said he, he would neither consent to live nor to leave his posterity. As this became a prominent political question in Massachusetts at the time when the Connecticut settlers removed, the lack of a proper definition of the power of the magistrates may have prejudiced the minds of some of their number against the Bay colony. Light will be thrown on the views of the Connecticut settlers concerning this question by an examination of what they did to prevent the evils of unlimited executive power from developing in their own colony. But, before this is undertaken, we must see by what steps government was established on the banks of the Connecticut.

No body of men in the history of the world ever mastered more thoroughly the art of forming and maintaining a compact political organization than did the magistrates and elders of Massachusetts. Working under the form of a corporation, they aimed to control, not only the admission of freemen, but that of inhabitants as well. Both the physical and the spiritual activity of those who became residents of the colony they sought so to regulate that the unity and harmony of the whole should in no way be imperilled. Moreover, all settlers in their midst whose views were in tolerable agreement with their own they sought to retain. The most notable exhibition of this policy was made when the emigration to the Connecticut was proposed. The question was under consideration for a year or more, and various efforts were made to divert the discontented from their purpose. When finally it became necessary for the magistrates to yield, they did so on the condition that the new settlements, though lying outside the bounds of Massachusetts, should continue under its government.

[1] Collections of Connecticut Historical Society, I, 11; Winthrop, Journal, II, 428.

In May, 1635, the general court granted permission to the inhabitants of Watertown and Roxbury to remove, "provided they continue still under this government." A month later similar permission was given to Dorchester.[1] In September it was enacted that constables chosen by towns on the Connecticut should be sworn in by some magistrate of Massachusetts. In March, 1636, before the more important migration from Newtown and Dorchester occurred, the general court created a commission of eight members, and empowered it to administer justice and regulate affairs in the Connecticut settlements for a period of one year.[2] Its executive control was to extend over trade, granting of lots, planting, building, military discipline and defensive war. It was also empowered to summon the inhabitants as a court. Springfield lay within its jurisdiction, as well as the settlements further south. The members of this commission were men who had already gone to the Connecticut or were intending soon to go and therefore to become residents of the localities they were to govern. There is no evidence that after their appointment the parent colony sought to control their action by means of appeals or in any other way. Indeed, they could not legally do so, for there was no proof that any of the proposed settlements, except Springfield, would lie within the Massachusetts bounds. Furthermore, careful provision was made in the commission for guarding such interests as the Warwick patentees might have in that region;[3] and that surely could not have been done by annexing the river towns to Massachusetts. Winthrop[4] states that Massachusetts never intended to make Connecticut subordinate to itself; but in 1641, when replying to a petition from Springfield, the general court declared that there was in 1636 no intention of dismissing the Connecticut settlers from the jurisdiction of Massachusetts, but rather to reserve an interest on the river, and that so the Connecticut men understood it.[5]

[1] Massachusetts Colonial Records, I, 146, 148, 160. [2] *Ibid.*, p. 170.

[3] John Winthrop, Jr., who had been appointed governor by the Warwick patentees, was consulted in reference to the issue of this commission.

[4] Winthrop, Journal, I, 342. [5] Massachusetts Records, I, 321.

Judging from the way in which Massachusetts dealt with the Narragansett settlements and with the settlements of Northeastern New England, one would infer that the chief reason why she did not attempt to absorb the river towns was the fact that she lacked a favorable opportunity. Had they not been peopled by orthodox Puritans and led by men of the resolution and ability of Hooker and Haynes, and had they not at once developed an independent life so vigorous as to enable them to make headway against the Dutch and the Indians, the possibilities of prolonged control implied in the resolutions passed by Massachusetts at the time of their removal might have been realized. As it was, however, the three river towns, lying outside Massachusetts bounds, never by word or act acknowledged dependence upon her, thus imitating in their relations with the parent colony the policy which that colony systematically pursued toward the home government.

Still, during the first year of their existence, the river towns were governed by commissioners who derived their authority, such as it was, from the general court of Massachusetts. Their authority was not assumed; neither did it proceed from election by the inhabitants of the towns themselves. What, now, did those commissioners accomplish during the year of their existence? They swore in constables for the towns, though those officers had very likely been elected by the localities they were to serve. They ordered trainings, the keeping of a watch and the enforcement of the assize of arms in each town. By their order names were given to the towns, and under the authority of the commissions town boundaries were fixed.[1] During that year, then, the towns were not independent of each other or of a power outside themselves.

On May 11, 1637, at the end of the official term of the commissioners, a general court met at Hartford. As they had power to call courts, it may be supposed that this one was summoned by them. It consisted of six magistrates and nine deputies elected by the towns,[2] those representing each town being called its "committee." Hooker states that the magis-

[1] Connecticut Colonial Records, I, 1–9. [2] *Ibid.*, pp. 9 *et seq.*

trates were elected by the committees, and by these their oath of office was administered.[1] This assembly was apparently organized in the same way as was the Massachusetts general court at that time. Its meeting was occasioned by the necessity of not only forming an independent government, but raising men and supplies for the Pequot war. But the point with which we are immediately concerned is this: that the general court at once assumed a more complete control over the towns than the commissioners had exercised. During 1637 and 1638 it exercised over them the fullest degree of military control, culminating in the passage of a comprehensive militia act.[2] It also ordered a quota of men with supplies to be sent from the towns, to settle in the territory conquered from the Pequots and to hold it for the colony.[3] It levied taxes and chose a treasurer for the colony. It ordered the continuance of the judicial business which the commissioners had been transacting, by a resolve that a "perticular Courte" should be held at Hartford.[4] It regulated trade along the river and the relations between the Indians and the inhabitants of the towns. Therefore, substantially the same relations between the general court and the towns as those which existed in Massachusetts seem to have been continued in Connecticut. Connecticut was in no sense formed by a "consociation" of independent towns, for the simple reason that its towns were never independent. No imposing theory of federal union can be evolved from the early history of the river towns without drawing very heavily on the imagination.

When, in the years 1638 and 1639, the river towns undertook the task of organizing a government in a more formal and permanent fashion than before, they were negotiating with Massachusetts about an alliance or confederation.[5] The two colonies were jealous of one another. The river towns charged Massachusetts with trying to prejudice would-be settlers from joining them, by exaggerating their poverty and their sufferings;

[1] Connecticut Historical Collections, I, 13, 18.
[2] Records, I, 9–16. [3] *Ibid.*, pp. 12, 17, 20. [4] *Ibid.*, pp. 12, 16.
[5] Winthrop, Journal, I, 283, 342.

Massachusetts complained because the Connecticut settlements claimed Springfield and would not in all respects be bound by its Indian policy. The Connecticut towns feared that Massachusetts might still absorb them. Hence, when in 1638 Massachusetts suggested a plan of union, wherein power should be given the commissioners of the respective colonies to settle finally all matters of difference between them, Connecticut objected. It would have had the commissioners meet, with the understanding that, if they could not agree, they should return to their several colonies for additional instructions and authority, and that they should continue that process until an agreement could be reached. Apparently it was fear of the superior influence of Massachusetts that led the weaker colony to dread any union with her, except under the loosest forms of confederation.

These differences and jealousies were canvassed at the time in a correspondence between the leaders of the two colonies, Hooker and Winthrop; and these spokesmen were naturally led to emphasize the divergence in their political views. Winthrop

> expostulated about the unwarrantableness and unsafeness of referring matter of counsel or judicature to the body of the people, *quia* the best part is always the least, and of that best part the wiser part is always the lesser.

In his *Journal*, also, he recorded the opinion that the failure of Connecticut to show the desired spirit of harmony was due to the fact that she chose to office so many men of no learning or judgment. This, he said, made it necessary that the burden of public business should be assumed by one or more of her ministers, who, though men of singular wisdom and godliness, showed the defects of those who were acting outside their true sphere. Hooker defended the course of Connecticut in reference to the proposed articles of confederation and all other matters as prudent and just, while he expressed, in the terms already stated,[1] his disbelief in unlimited magisterial discretion.

[1] Winthrop, Journal, I, 344; II, 428; Connecticut Historical Collections, I, 7 *et seq.*

It seems that on the Connecticut the controverted points in the plan of union were referred to the general court, or possibly to a court of election; while at Boston the magistrates preferred to conduct the entire negotiation. But when later the plan approached completion, the Massachusetts general court repeatedly took action by adding a number of deputies to the body of negotiators, by instructing them as to one point and by approving the plan when perfected.[1] Thus, in the end, the procedure of Massachusetts was not so different from that of Connecticut as one would infer from the language of Winthrop and Hooker that it might have been. This fact would indicate that, from the fragments which remain of the correspondence between these two men, possibly exaggerated inferences have been drawn concerning the divergence between their opinions and the difference between the systems and policies of government which they contributed so much toward establishing.

Other evidence bearing on this point may, however, be derived from the utterances of Hooker in connection with the formal establishment of government in Connecticut. From the very fragmentary notes that have been preserved of the famous sermon which he preached before the general court on May 31, 1638, one would infer that the thoughts he chiefly sought to convey were these: that all public officials should be elected, that their powers should be defined and that both these things should be done by a body of freemen, as numerous and inclusive as would consist with their acting "according to the blessed will and law of God."[2] Here, again, Hooker must have expressed his distrust of the Massachusetts system so long as the powers of its magistrates were undefined, while he also renounced the religious test in the sharp and precise form which Massachusetts had given to it. But Hooker was essentially a Puritan of the Massachusetts type: he was not a believer in the separation of church from state or in manhood suffrage. In other words, he was not a democrat in the modern sense of the term, though much that has been written about him would lead

[1] Massachusetts Records, II, 31, 35, 36, 38.

[2] Connecticut Historical Collections, I, 20.

us to infer that he was. Hooker's democracy was a compromise between the views of Winthrop and those of Roger Williams. His scheme contemplated the application of a moral test to those who desired to be admitted as freemen, and this test was to be applied either by those who were church members or by those who in their ethical views were in agreement with the church members. Not only does the later legislation of Connecticut show this to be true, but provision for it was made in Hooker's theory, by his insistence that political action should be guided by the will and law of God. The doctrine of the union of church and state is in the preamble of the Fundamental Orders, while the provision that the governor should be a member of some approved congregation shows the intention to maintain such union. Secularized democracy, an outgrowth of the dogma of equality and of voluntaryism in religion, would have been condemned by Hooker almost, if not quite, as vigorously as by Winthrop.

The Fundamental Orders, which were drawn up in 1638 and adopted early in 1639, embodied and set forth a scheme of government which was in harmony with Hooker's views and to the origin of which his influence in no small degree contributed. Connecticut historians and others have represented this as in form and contents radically new, and as suggestive of a theory and practice which was far in advance of anything previously attained. But if we compare the positive contents of the Fundamental Orders with the laws of Massachusetts and New Plymouth, so far as they had been developed at the time, we shall find no important differences. The provision for a general court which should meet in two annual sessions, one of which should be attended by all the freemen for the purpose of electing the magistrates, was not original. The general court, when organized for legislation, was to consist, as in Massachusetts, of the magistrates and of representatives of the towns assembled in one house under the presidency of the governor. As in Massachusetts, the governor was empowered to summon the court for both regular and special sessions; while in both colonies the court punished disorder and the non-attendance of

its members. The power of the freemen to call the general court was not specified in Massachusetts law; but in November, 1639, it was enacted that the court of election should meet at the time mentioned in the charter without summons.[1] The ballot was used in the election of at least a part of the magistrates in Massachusetts in 1634, but the Fundamental Orders provided for its employment in the choice of both magistrates and deputies.[2] The provision for the nomination of magistrates was new, but it was introduced in Massachusetts in 1640.[3] The control of the general court over contested elections is brought out more distinctly than in any Massachusetts law then existing; but in 1635 an order had been passed by the general court at Newtown empowering what we should now call a caucus of the deputies, which met before the opening of the session, to settle such disputes.[4] The specification of the legislative powers of the general court is substantially the same as that contained in Massachusetts law.[5] The method of raising revenue by levies on the towns had been in vogue in Massachusetts from the first; and the quotas were fixed by the general court, though in its early legislation we have no record of its employing committees for the purpose.[6] The oath of fidelity was administered in all the colonies. The position and the power of the governor were exactly the same in Massachusetts as in Connecticut, though they are more precisely expressed in the Fundamental Orders than in the early acts of Massachusetts. In Massachusetts, as in Connecticut, the general court was the tribunal before which magistrates and other high offenders were brought to justice, though this principle was more specifically stated in the Fundamental Orders than in the laws of Massachusetts.[7] The provision that no one should be governor for two terms in succession[8] was, indeed,

[1] Massachusetts Records, I, 277.
[2] Winthrop, Journal, I, 157; Fundamental Orders, Arts. 2 and 7.
[3] Massachusetts Records, I, 293; Fundamental Orders, Art. 3.
[4] Massachusetts Records, I, 142.
[5] Massachusetts Records, I, 117; Fundamental Orders, Art. 10.
[6] Massachusetts Records, I, 77, *etc.*; Fundamental Orders, Art. 10.
[7] Massachusetts Records, II, 93; Fundamental Orders, Art. 10.
[8] Connecticut Records, I, 346, 347; Fundamental Orders, Art. 3.

a new and significant departure from Massachusetts policy; but in 1660 it was repealed. Even in the omission of the religious test, the point in which the document shows the widest departure from Massachusetts principles, Connecticut did not stand alone; for New Plymouth expressly established no such qualification for citizenship. So it appears that, if we examine the Fundamental Orders in detail, we find in them no important departure from the system of government previously existing in the two parent colonies of New England.

From the contemporary utterances of Hooker, indeed, one would expect to find more specific limitations upon the discretion of the magistrates; but in fact the powers of governor and assistants were very loosely and imperfectly defined, while no special attempt was made by supplementary legislation to specify the penalties which might be inflicted for crime. We look in vain for the classification of the organs and the powers of government, and the clear distinctions between them, which appear in modern written constitutions. In fact, we find brought together in a single document what in Massachusetts and New Plymouth had been formulated in a succession of statutes, and we find nothing more. Moreover, though the Fundamental Orders were evidently adopted by a convention [1] of all the free planters held at Hartford, January 14, 1639, and hence must rank formally as a fundamental law or written constitution, it should be remembered that such a body would differ in no appreciable respect from a court of election and therefore would not bear the exceptional character which attaches to a modern American constituent convention. Also, as the document contained no provision for amendment, the general court assumed and exercised the right to change it, as it would any statute, in ordinary legislative session. As that right was unlimited and its exercise unopposed, the Fundamental Orders did not operate as a limitation on the powers of the general court. So far as any authority within the colony was concerned, the supremacy of the general court was as complete as that of the legislature of

[1] Trumbull, History of Connecticut, I, 110. See also Preamble of Fundamental Orders.

Massachusetts; and hence, until the royal charter was granted, Connecticut lacked the steadying influence which Massachusetts occasionally derived from even the general and summary provisions of its patent.

If marked originality is to be found anywhere in the Fundamental Orders, it must appear in the preamble. This is, in fact, the part of the document which has chiefly attracted the attention and awakened the imagination of historians. The frank declaration of independence which is there made, and the announcement of the fact that in the opinion of the framers an original compact was being formed, has given to this document most of its interest. The preamble has been dwelt on at greater length and with much greater enthusiasm than have the provisions of the constitution concerning government. It has been made to signify much more than the Mayflower compact, and its adoption has been regarded as the initial act in the development of American democracy. But really there is nothing in the preamble, or in the body of the Fundamental Orders, to indicate that, if the settlers of Connecticut had possessed a royal charter, they would have proceeded in a manner essentially different from that of the colonists of Massachusetts.

For Massachusetts the outline of a system of government, such as it became after the removal of the corporation, was given in its charter. Magistrates and a general court were in existence when the colony was founded. All that was needed there was that, through these organs and under the initiation of the executive, the work of government should be begun. Specific forms and details of government were assumed, but the right to establish government had not to be assumed. The Connecticut colonists, however, in the absence of legal authority, after the close of the year during which the commissioners appointed by Massachusetts had administered their affairs, practically set up for themselves. The decisive step was taken at that time, although, owing probably to the pressure of the Pequot war, the formal declaration of the fact was postponed till the colony had justified its claim to separate

existence by triumph in that conflict. Imitating the example of the churches, a plantation covenant was prefixed to the solemn announcement which they then made of the outline of their system of government. Wishing to recognize no outside authority, they declared that they associated themselves together as a commonwealth — that they entered into combination among themselves and with those who should later join them, and on behalf of their posterity, to maintain both civil and ecclesiastical government. But this was practically what had been done by the Pilgrims in the *Mayflower;* it was precisely what was being done in several of the Narragansett settlements; it was what New Haven did with almost painful elaboration about five months later. As the river towns had about two years before tacitly assumed the powers of government which they now declared that they were assuming, and as the Fundamental Orders probably did not essentially change the system of government that already existed on the Connecticut, one must infer that the course of history would not have been much different from what it has been, had the preamble of that document never been issued. Declarations and covenants could not change the fact of the case — that Connecticut, while assuming the right to exercise authority, derived her governmental system by imitation from Massachusetts and through that colony from the trading companies of England. The line of descent is clear and unmistakable, while the process of inheritance was free and natural.

From the adoption of the Fundamental Orders to the issue of the royal charter, the development of the colony of the river towns was steady and normal. According to the provision of the constitution (Art. 10), the general court alone admitted freemen. The qualifications required were admission as inhabitants by some town and the taking of the oath of fidelity. This oath, like that of Massachusetts, contained an acknowledgment of submission to the government of Connecticut, and a promise not to plot or share in any plot against it, but promptly to reveal such schemes, to maintain the honor of the jurisdiction and to vote conscientiously for its best

interests.[1] In 1643 the general court reaffirmed the provision of the Fundamental Orders, that only those should be regarded as inhabitants of a town who had been admitted as such by a majority of its voters.[2] In 1646 it was enacted that none who had been fined or whipped for any scandalous offense should be admitted to vote in town or commonwealth, or to serve on a jury, till the general court should specially permit it.[3] The same court also enacted that the magistrates should administer the oath of fidelity to all males above sixteen years of age. When in 1656 Quakers began to appear, it was ordered that those who desired admission as freemen by the general court should bring certificates of peaceable and honest conversation, signed by all or a majority of the deputies from their respective towns.[4] In 1662 candidates were required to bring certificates to the above effect signed by a majority of the selectmen, instead of the deputies, of their town.[5] In 1659 a property qualification was introduced — the possession of a personal estate of £30.[6] Three years later the possession of real estate to the amount of £20 was required. When in 1665 the royal commissioners presented the requirement of the king, "that all men of competent estates and of civil conversation, though of different judgments, be admitted to be freemen," the general court replied that its "order for admission of freemen is consonant with that proposition."[7] Still, there was a stringent moral requirement, which, when taken in connection with the character of the selectmen and of the members of the general court who enforced it, and with the care which they exercised over both churches and individuals, appears to have been semi-religious in its nature.[8]

[1] Connecticut Records, I, 62. [2] *Ibid.*, p. 96.

[3] *Ibid.*, pp. 138, 139. The magistrates were permitted temporarily to readmit those who had been punished as specified in this act to the privileges of freemen on their presenting a certificate of good behavior.

[4] *Ibid.*, p. 290. [5] *Ibid.*, p. 389.

[6] *Ibid.*, pp. 331, 389; II, 253. [7] *Ibid.*, p. 439.

[8] Trumbull, History of Connecticut, I, 287 *et seq.*; Connecticut Records, I, 520, 523, *etc.* True and suggestive statements on these and other related subjects will be found in a paper by Henry Bronson on the "Early Government of Connecticut," in Papers of New Haven Historical Society, III.

The most perfect harmony [says Trumbull] subsisted between the legislature and the clergy. Like Moses and Aaron, they walked together in the most endearing friendship. The governors, magistrates and leading men were their spiritual children and esteemed and venerated them as their fathers in Christ. . . . Thus they grew in each other's esteem and brotherly affection, and mutually supported and increased each other's influence and usefulness.

The principles of the Cambridge Platform of Discipline were as fully accepted and enforced in Connecticut as they were in Massachusetts. The ecclesiastical history of Connecticut shows that the body of freemen, from which the general court proceeded, consisted of church members and of those who were in close sympathy with them. The regularity with which a comparatively small number of men were reëlected to office — making the tenure of the magistrates, though they held elective offices, very permanent — is an indication of the same thing. This is a phenomenon which appears in Massachusetts as well, and it reveals the fact that the political conditions in those colonies were much the same.

As we have seen, the development of the general court in Connecticut began at the point which it had reached in Massachusetts when the removal took place. For two years previous to that event deputies, or representatives of the towns, had sat in the general court of Massachusetts, and no legislature met on the banks of the Connecticut without their presence. But deputies and magistrates continued to meet in one house until 1698,[1] a period of more than forty years after Massachusetts had possessed a legislature of two houses. After the issue of the Fundamental Orders little legislation appears concerning the organization or powers of the general court, and there was slight need of it. Prior to 1662 only a few minute changes in detail were passed — such as the provision that a moderator should be chosen to preside in the absence of the governor and deputy governor,[2] and that, in the absence of the same officials, a majority of the magistrates might call a session of the court.[3]

[1] Records, IV, 267. [2] *Ibid.*, I, 256, 348, 365, *etc.* [3] *Ibid.*, p. 256.

The business of the general court was very extensive. Besides its two regular sessions, many extra sessions were held. In 1645 it met seven times; in 1658 it met twice in March and once in May, in August and in October; in many other years it met as often as in these. As in the other corporate colonies, its work was legislative, administrative and judicial; while the character and volume of its product in each of these lines were not materially different from that which appears elsewhere in New England. Its most important legislation had reference to towns, military affairs, moral and ecclesiastical relations, the levy of rates, Indian relations, crimes and their penalties.[1] Not only did the general court legislate comprehensively, as in October, 1639, for the establishment and regulation of towns,[2] but by special orders it provided for the enforcement of this legislation and controlled the action of towns in many ways. Thus, and by means of land grants, a town system similar to that of Massachusetts and New Plymouth was developed; and by means of this system the territory of the colony was extended eastward to include the Pequot country, southward to the mouth of the river and westward till it was met by the counter claims of the Dutch. By legislation beginning in 1637 a militia system — with trainings and the assize of arms, foot soldiers and troopers — was created, while the lower officers who were elected by the towns were confirmed by the general court. In the domain of finance, the elective office of treasurer was strictly regulated; the accounts were yearly audited by a committee of the general court; lists of taxables and taxable property were annually returned to the general court by the towns; and these lists served as a statistical basis on which to levy the country rate. The regular judicial business of the colony was transacted in the particular court or court of magistrates. Occasionally an appeal from this tribunal was heard by the general court. The general court also granted divorces and sometimes probated wills. It held no state trials like those instituted by Massachusetts against the parties who attacked her ecclesiastical system.

[1] See Records and Code of 1650 in Records, I, 509. [2] Records, I, 36.

Though in both these colonies the judicial functions of the general court were supplementary, the volume of business of that nature done by the court of Massachusetts seems to have been the greater.

The name "orders," which was often applied to the acts of the general court, describes the major part of them more accurately than the word "laws." They were administrative ordinances, occasioned by reports and petitions and adapted to individual cases and particular events, rather than laws intended to furnish permanent and general rules of action. The issue of such orders constituted a large part of the business of each session, and the orders issued dealt with a great variety of subjects. Not only, for example, did the general court legislate concerning the Indians, but it issued orders for the settlement of disputes among them, and between them and the English. It concluded treaties with the Indians, prosecuted and punished them for crime, corresponded with the neighboring colonies about them and executed the orders of the commissioners of the United Colonies in reference to them. The court acted in the same way in regard to the relations with the Dutch. By similar orders it provided for the enforcement of its legislation concerning the internal affairs of the colony and controlled the action of towns and officials who were intrusted with the execution of its laws. Through its power of choosing, commissioning, instructing, removing or otherwise disciplining officials, the general court exercised continuous administrative influence, not only over towns, but over all the business of the colony. The court also regularly appointed committees to execute its orders. These might consist exclusively, or only partially, of members of the court. In most, if not all, cases the governor and some of the assistants were placed upon such committees; and deputies or others who were associated with them were selected because they lived in the locality where the business must be done, or because of their special knowledge of the case. When correspondence or negotiations were to be carried on, the governor and the magistrates were almost necessarily employed.

The employment of committees, not only for legislative but for distinctly executive purposes as well, is a very prominent feature in the early practice of the legislatures of both Massachusetts and Connecticut. The former, moreover, resorted to it quite as extensively as did the latter; and to some extent the practice was followed by New Plymouth and Rhode Island. So much more common was it in New England than in the provinces,[1] that it may fairly be called a distinctive feature of the legislatures of the corporate colonies. When compared with the contemporary practice of Parliament or of any other European legislature, it must appear as an important innovation. It may probably be explained as a continuation of the custom of the trading companies of England, which frequently made use of committees in the transaction of their business. The executive of the corporate colony, moreover, was elective in origin and multiple in form: it was an executive board — an annual committee, so to speak — of the freemen for certain important purposes of government; and the bodies which the general court created for more specific purposes were not dissimilar. So complete was the control of the general court over the business of the corporate colony, that it was easy for it not only to supplement but to assume the work of the executive — a thing which, as the legislature of the province, and of the kingdom in fact, was organized, its representative branch could not do without a struggle. In the corporate colony the executive was organically the agent of the general court and, when the two were harmonious, was actually used as such; while in the province the executive was the rival and the competitor of the lower house.

The colony of the river towns, having been founded without a royal charter, attained its ultimate limits by expansion and by the absorption of two smaller colonies, neither of which existed by virtue of rights superior to its own. The first colony to be absorbed was that founded at Saybrook. The right

[1] The council and assembly of New York frequently made use of committees in the eighteenth century. See the Journal of the Legislative Council and Journal of the General Assembly.

of those who held the so-called Warwick patent[1] to establish a settlement west of Narragansett Bay can certainly not be affirmed. No grant to the Earl of Warwick appears among the extant records of the New England Council. To be sure, those records are not complete; but such a grant was not brought to light in the seventeenth century, though the Connecticut authorities were especially anxious to establish claims to the territory in question.[2] Moreover, in the extant patent of 1631 Warwick does not positively assert title to land west of Narragansett Bay, but simply conveys such claims as he has. If it be compared with the deeds of lease and release, by the grant of which the Duke of York made Berkeley and Carteret proprietors of New Jersey, the difference in the wording and implication will be clear. Still, the patentees acted under the grant as if it were genuine, and the conduct both of Massachusetts and of those who settled the river towns in 1636 implies the same belief. This document is one of the indications that we do not yet fully understand the relations which existed between the Earl of Warwick and the New England Council, on the one hand, and the Puritans who were interested in New England colonization, on the other.

Not until June, 1635, two months after the New England Council resigned its charter, did the Warwick patentees attempt to take possession of any part of the grant they claimed. Then John Winthrop, Jr., was appointed by them governor for one year "of the river Connecticut with the places adjoining thereunto," and was instructed to build a fort and begin a settlement near the mouth of the river.[3] These commands were executed by Winthrop, with the aid of Lyon Gardiner, and thus a small proprietary colony was established. In 1639 George Fenwick, one of the patentees, settled there with his family, and the place was named Saybrook. A church was built; and possession was taken of a tract of land lying on both sides of the

[1] Trumbull, History of Connecticut, I, 27, 435; Johnston, Connecticut, pp. 8 *et seq.*; Connecticut Records, I, 568.

[2] See the reply of Connecticut to New Haven's Case Stated, New Haven Colonial Records, II, 533.

[3] Trumbull, I, 497.

river and extending back about eight miles from its mouth. The river towns soon drew Fenwick into the closest possible relations with themselves, by securing his appointment as one of the commissioners of the United Colonies and contributing toward the maintenance of the fort at Saybrook.[1] By this means they secured his aid in thwarting the plans of Massachusetts to obtain a part of the Pequot country, while they opened the way for the purchase of Fenwick's plantation. This they effected in December, 1644, Fenwick conveying the fort and the lands over which he had jurisdiction, and promising that, if the territory lying between the Connecticut and Narragansett Bay and mentioned in the Warwick patent came into his power, it should be transferred to Connecticut.[2] Fenwick was permitted to live at Saybrook for ten years and to make use of certain buildings and land there. It was finally agreed to pay him £180 annually during that period, the payment to be made in good wheat, pease, rye or barley at fixed rates. The duty on the beaver trade and the dues from Springfield, to which Fenwick was entitled, were also continued. Fenwick soon returned to England, where he died in 1659. As he left unfulfilled his promise to secure for Connecticut jurisdiction over the territory mentioned in the Warwick patent, the colony tried to recover from his agent and heirs a portion of the money which had been paid. In 1660 it accepted a repayment of £500 in lieu of all demands, and the dispute was closed.[3] Hence, prior to the grant of the royal charter, Connecticut had secured no valid title to the soil which she had occupied, but she was in possession of the mouth of the river and of a goodly stretch of shore along the Sound.

The jurisdiction of New Haven — the second colony to be absorbed by that of the river towns — was settled by Puritans of the strictest type, whose leaders, Eaton and Davenport, had been closely identified with the Massachusetts enterprise in the early stage of its development. Their motives and ideals were

[1] Connecticut Records, I, 113 *et seq.*, 170.
[2] *Ibid.*, I, 268, 271, 568.
[3] *Ibid.*, I, 575 and references.

practically the same as those of Winthrop and Cotton. Their migration, nevertheless, had no official or corporate connection with that which resulted in the settlement of Massachusetts: it pursued an independent course from its origin in England to its successful accomplishment on the shores of Long Island Sound. The leaders of the enterprise, with a part of the settlers, landed at Boston, where they remained for a few months; but they never were or intended to be more than sojourners there, while they were looking for a permanent abiding place. Though there was a certain commercial element in the enterprise, no relations continued with partners left behind in England which to any extent modified the development of this colony. It was even freer from influences of that nature than Massachusetts had been. Not only was New Haven from the outset independent of other colonies, but it assumed and enjoyed to an equal degree independence as regarded the mother country.

The process by which the inhabitants of New Haven assumed governmental powers has been too often described to call for elaborate treatment here. The date and text of their first plantation covenant have, indeed, been lost; but this loss is more than made good by the details which have been preserved concerning the doings of the "general meetinge" that was held in Newman's barn, June 4, 1639. This meeting took the decisive steps which led to the establishment of government in the plantation. The outcome was not essentially different from that which had been reached at Hartford the previous January, and elsewhere on other dates, some earlier, some later. But Puritanism of the *doctrinaire* type found more complete expression here than at any other time or place. All inherited political connections were tacitly renounced; and by solemn and express agreement a new political body was formed, which was to consist only of the elect — of church members whose lives successfully bore the test of the most rigid scrutiny. After this condition of citizenship had been adopted as the corner-stone of the political edifice, the church was founded. The

germ of this body was the famous "seven pillars,"[1] or seven leading men of the settlement, selected by coöptation from a larger body of twelve which had been chosen by the "general meetinge." The "seven pillars" presumably added to their own number those who were to be the original members of the church, and this body chose its pastor and other officials. The "seven," though not technically, were at the same time really the only magistrates in the little settlement, and continued to be such till October 25, 1639. A freeman's oath with the customary provisions was drawn, and more than one hundred freemen signed the "foundamentall agreement . . . thatt church members onely shall be free burgesses."[2] This was apparently done, at least in part, while the "seven" held sway both in church and commonwealth.

On October 25, in the first public court of which there is record, the "seven" resigned such power or trust as they had received, and all who had been received into the fellowship of the church were admitted as members of the court.[3] Six who were members of other approved churches were also admitted to citizenship. After the freeman's oath had been administered, at least to some, and Davenport had preached from Hooker's text combined with Exodus, xviii, 21, they chose a magistrate and four deputies or assistants, besides a secretary and a marshal or constable. It was also agreed that the term of office for all magistrates should be one year, and that the general court should meet in annual session the last week in October. Finally, with supreme self-confidence, they sought by a single resolution, not only to exclude English statute and common law from their settlement, but to forestall the necessity of important legislation on their own part. They resolved "thatt the worde of God shall be the onely rule to be attended unto in ordering the affayres of government in this plantation."

Like Plymouth, New Haven, as thus founded, was town and colony combined. In 1638 the land upon which the town was settled, together with a tract within which exist ten modern

[1] "Wisdom hath builded her house, she hath hewn out her seven pillars." — Proverbs, ix, 1. [2] Records, I, 17, 19. [3] *Ibid.*, pp. 20, 21.

townships, was bought from the Indians. Outside this lay the territory upon which Guilford and Milford were founded. In 1640 land to the west of Fairfield was bought and the plantations of Stamford and Greenwich were settled, though the latter did not finally acknowledge itself a part of New Haven colony till 1656.[1] In 1640, also, the purchase which became Southold on Long Island was made. In 1642 constables were chosen at the New Haven court for Stamford and Southold.[2] Milford and Guilford were settled by families which, though they shared in the common migration, were never more than sojourners at New Haven. The settlements which they made were at the outset politically independent.[3] Stamford and Branford were also settled largely by seceders from the church and town of Wethersfield. Hence it appears that the degree of political and territorial unity which existed in New Plymouth did not obtain at the outset in the colony of New Haven. The plantations and towns in the latter colony were not in all cases founded by the parent settlement, and thus were not under its administrative control. If, then, from these plantations one colony was to emerge, and at the same time New Haven colony was to become distinct from New Haven town, the change could be effected only by a process of union or federation. This event occurred in 1643, and was brought about mainly by the formation of the New England Confederacy and the necessity arising therefrom that New Haven should appear in it as a unit comprising all the settlements which were closely related to it.[4]

On July 6, 1643, Eaton and Gregson, who as delegates of the town of New Haven and the plantations immediately dependent upon it—"the jurisdiction," as it was beginning to call itself — had met the commissioners from the other colonies, reported the articles which they had agreed upon as the constitution of the league. These were approved, July 6, by "a

[1] Atwater, History of New Haven Colony, p. 413.

[2] Records, I, 70, 78.

[3] Smith, History of Guilford; Lambert, History of New Haven Colony, pp. 85 *et seq.*; Atwater, pp. 155 *et seq.*

[4] Records, I, 96 *et seq.*

general court held att New Haven for the plantations within this jurisdiction." It was ordered that all males in every plantation who were between the ages of sixteen and sixty should be numbered and armed, and that their arms and trained bands should be viewed. A tax was also imposed on the plantations to meet the expenses of "the combination," and it was ordered that the rules as to rating which had been in force at New Haven should be applied throughout the colony. It is important to note that at this court two members were admitted from Guilford. With their coöperation, then, these steps were taken preparatory to the organization of a colony government of the corporate type.

That organization was not completed till the following October. It was effected by transforming the outlying plantations of the jurisdiction, including Milford as well as Guilford, into towns with rights fully equal to the town of New Haven, it being expressly provided that New Haven should be the seat of government. A compromise was reached with Milford — which had admitted to the rights of freemen six inhabitants who were not church members — to the effect that no more such extensions of the franchise should be permitted and that the six should perform no functions outside of town affairs, except that of voting for deputies to the general court. Thus it was hoped that there would be no more violations of the "foundamentall order" concerning the suffrage. It was reaffirmed and placed at the head of the series of enactments, which were passed by the October court of 1643, providing for the establishment of the new colony government. By this the continued existence of the town courts, with their magistrates, was guaranteed. Provision was made for a "court of magistrates," to meet biennially at New Haven, with the powers of a tribunal of appeal and higher jurisdiction for the colony; and for a general court, consisting of the governor, deputy governor and all the magistrates of the colony, together with two deputies from each town, all sitting together as one house. Provision was also made for two annual sessions, one of which, in October, should be the court of election. Upon this body the

usual legislative powers, the right to administer oaths and the functions of a highest court of appeal were bestowed.

If the document which contains these provisions be critically examined, and compared with the enactments which had preceded it in the other colonies, it will be found to come no nearer to the modern idea of a written constitution than do they. It was simply an important statute, passed by the general court and capable in all parts of amendment or repeal by the power which created it. The religious test, though regarded as fundamental, might have been modified or repealed by the same process of legislation as was used or recommended in Massachusetts. In the formation of New Haven colony, also, the federal element appears with greater prominence than in the case of Connecticut; but it was the result of a union of parts whose origin was similar, whose influence was very unequal and the period of whose separate existence had been very brief.

As a colony, New Haven enjoyed an uneventful existence for twenty years. About 1653, when the settlements along the Connecticut were alarmed by rumors of attack by the Dutch and Indians, and those which lay furthest west thought themselves in imminent peril, agitation against the religious test was raised in Stamford and Southold.[1] Complaints were also uttered that the colony did not adequately provide for the security of its outlying settlements, and some were bold enough to challenge the legality of the control which it exercised over them. But the movement never assumed serious proportions, and subsided with the disappearance of danger. Nothing else of political importance occurred to disturb the quiet of the colony. Its institutions underwent slight development, though even under its peaceful conditions it was at once found necessary to forsake the Bible as a law book and to legislate much as other colonists did. They even went so far as to bring their most important enactments together into a code, as did Massachusetts and Connecticut. Its provisions, like the orders of court, conform to the ordinary New England type.

The Restoration found New Haven independent; but it also

[1] Records, II, 48 *et seq.*

found the colony of the river towns in possession of the settlements along the river and thence eastward to the Narragansett country, together with Fairfield. The latter plantation was so situated as to prevent the New Haven colony from attaining territorial unity. The Restoration also made the absence of legal guaranties of existence among the colonies of southern New England painfully apparent. Now that the king had returned, it behooved them all to look to their title deeds, for the inquiries which Charles I had been forced to abandon were likely to be resumed by his son. The controversy which Connecticut had with the Dutch over her western bounds, and that with Massachusetts and the Narragansett plantations over those on the east, early led her to take action toward procuring a royal charter. Though her address to the king was not prepared till the spring of 1661, a year before that the clause in the Fundamental Orders prohibiting the election of the same person as governor oftener than once in two years was repealed. This made it possible to reëlect John Winthrop for that year and a number of succeeding years. In 1661 he was also made agent to England, for the purpose of presenting the address and procuring a charter. To that effect he was instructed, and £500 were set aside for his use.[1] He was told to procure, if possible, a copy of the Warwick patent or, if that could not be done, to obtain a confirmation of it from the heirs of the patentees and to recover what had been paid to Fenwick for the "jurisdiction right." In case a royal charter should be granted, Winthrop was instructed to see that it conformed as nearly as possible to the Massachusetts patent. It was desired that the grant be made to several patentees with their associates, with such as might be joined with them, and their successors forever; and that the freemen, or associates, should have the exclusive right to choose officers for conducting the affairs of the colony. Eighteen were designated as the number who, it was desired, should be named in the patent.

Winthrop's success equalled, if it did not surpass, the most sanguine expectations. He procured a royal charter, dated

[1] Connecticut Records, I, 346, 347, 361, 368, 369, 579, 582.

April 23, 1662, which was more favorable to the grantees than was the Massachusetts patent. It created the persons, whose names — with a few exceptions — were in Winthrop's petition, together with their associates, a corporation on the place, under the name of the Governor and Company of Connecticut in New England in America. The usual corporate powers were expressly bestowed. The government actually existing, with the institutions which had grown up in the colony during the past twenty years, was recognized and guaranteed. It was provided that there should be one governor, one deputy governor and twelve assistants, — naming for the first year the patentees as incumbents of these offices, — to hold for an annual term, the elections of successors to be held at the May court of election. Provision was made for two annual meetings of the general court, or court of the corporation, which should consist of the governor, deputy governor, at least six of the assistants and not exceeding two deputies from each town. The usual powers — those which it had been in the habit of exercising — were bestowed on the general court, and all that should be necessary to validate its acts was their issue under the seal of the colony. The king expressly reserved no control whatever over legislation or over the administration of justice within the colony.

The extreme liberality of these provisions shows that the charter which was granted must have been substantially the same as Winthrop's draft. As by it a corporation was created on the place, it was not necessary to refer in it to the administration of subordinate government in the colony. The provisions that were made for the government of the corporation itself were provisions also for the government of the colony, for the two were identical. This charter, then, was more perfectly adapted to the needs of Connecticut than was the charter of Massachusetts to the form and necessities of that colony. It was such a patent as the founders of Massachusetts would have welcomed, could they have frankly avowed their plans before they left England. The moderate religious policy of Connecticut, and the fact that no complaints against that colony were laid before the home government, now stood it in good stead.

Massachusetts could scarcely have hoped to be able to exchange her charter for one like that of Connecticut.

The bounds of Connecticut were now unexpectedly extended through to the South Sea. New Haven was thus included within that colony — as she also would have been if the validity of the claims of Connecticut under the Warwick patent could have been established. This result was especially gratifying to the river towns, in the minds of whose inhabitants the desire for territorial expansion was then especially strong. Also, in the controversy which was then agitating the New England churches, Connecticut favored the so-called half-way covenant, while New Haven adhered to the rigid practice of the first generation of Puritans. The strict adherence of New Haven to the religious test and her extreme independence would have operated strongly against her, had she attempted to secure guaranties in England for continued existence. These causes contributed to increase the difficulties which attended the efforts made by New Haven to save herself from annexation.

Before Winthrop left for England, Davenport secured from him a statement that the magistrates of Connecticut had agreed not to coerce their sister colony into a union. Later, after the charter had been granted, he wrote from London that he had at the time assured the friends of New Haven that there was no intention of doing injury to her rights or interests, or of meddling with any town or plantation which was settled under her government; and, had any other intention been declared, it would have increased the difficulty of procuring the charter without inserting in it a proportional number of New Haven names. Her membership in the New England Confederacy also gave New Haven a status among her sister colonies, though not in England; and her absorption by Connecticut would remove much of the little vitality which remained in the union after the Restoration. When, therefore, in 1663, the delegates from New Haven appealed to the commissioners of the united Colonies, they declared that the jurisdiction of that colony could not be violently invaded without a breach of the articles; and that, if any power had been exercised there without the

authority of the colony, it should be recalled until the conditions were favorable to an orderly settlement. But both the history of the Confederacy and its ultimate course in this case showed that, when the crisis should come, New Haven must be prepared to face her rival alone.

In this affair the general court and magistrates of Connecticut clearly exhibited the spirit of the bully — the same spirit which at the same time they and the other New-Englanders were showing toward their weaker neighbors, the Dutch. Of course their words and conduct were all in the interests of civilization, but they found expression in the imperative mood. Connecticut, prior to April, 1662, stood as naked and defenseless before the crown as did New Haven. Her charter she had secured without consulting the sister colony, whose political annihilation was involved in the issue of the document. As soon as the charter arrived at Hartford, still without consulting New Haven, she received the submission of the town of Southold and of the discontented faction in Stamford, Greenwich and Guilford. Constables were appointed to act for Connecticut in Stamford and Guilford. Then a committee was appointed to treat with New Haven. Connecticut, that is, first gave recognition and support to those in the colony of New Haven who, because of the religious test or for any other reason, were discontented and ready to coöperate in its overthrow. After that had been done, and a long step had thus been taken toward the desired issue, resort was had to negotiation. The result was that bitter feelings were aroused, a riot at Guilford was encouraged, and the negotiations were disturbed and hindered by recriminations. The mild and peaceful methods which Winthrop recommended from England, after the first step had been taken, could not be tried. In the defense of her conduct Connecticut relied chiefly on the mere fact that she possessed a charter; and, considering the source whence they came, she made some of the most remarkable admissions concerning kings and the extent of royal authority which ever proceeded from any colonial — to say nothing of any Puritan — source.

How long the controversy might have continued no one can tell. But early in 1664 came the news of approaching events which suddenly brought it to a close. New Netherland, with the Connecticut River as its eastern boundary, was to be granted to the Duke of York and Dutch rule overthrown. At the same time a royal commission was about to visit New England for the purpose of settling disputes and taking steps which would lead to the proper recognition of royal supremacy. To New Haven absorption by Connecticut was vastly preferable to submission to the Duke of York, with his unlimited proprietary power and his province filled with an alien population — where, too, Anglicanism might be expected to prevail. The necessity, also, that the Puritan colonies of New England should bury their differences and present a united front before the royal commissioners was instantly recognized. These considerations overcame at New Haven the irritation which had been provoked by the arbitrary conduct of Connecticut, and the weaker colony bowed gracefully to the inevitable. By legal steps, which it is not necessary here to particularize, her inhabitants were admitted to a full share in the benefits of the new charter and of government under it; while the annexation of her territory rounded off the Connecticut colony on the southwest and completed the process of her expansion. The religious test in its original and precise form disappeared, and thus a serious occasion of controversy with England and a barrier to progress within Puritan society was removed. The enlarged Connecticut, with a charter and a government which were suited to the geuius of her people, continued on her peaceful way; and, largely because of the close adaptation of government to society, earned for herself the name of the "land of steady habits." From the outset she had been a little more modern and progressive than Massachusetts and slightly more democratic; and these qualities she continued to display throughout the colonial period.

HERBERT L. OSGOOD.